IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3819 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

H.H.FARUQI C/O,M/S.GUJ.HEAVY CHEMICALSLTD

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 3819 of 2003

MR RK JAIN WITH MR RAKESH GUPTA FOR M/S TRIVEDI & GUPTA for Petitioner No. 1-14

MR AD OZA, PUBLIC PROSECUTOR for Respondent No. 1

MR YOGESH S LAKHANI for Respondent No. 2

NOTICE SERVED BY DS for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 16/12/2003

C.A.V. JUDGEMENT

The present petitioners, who are original accused Nos.9,6,7,8,4,5,11 and 13 to 19 in Criminal Case No.868 of 2002 which has been filed by the respondent No.2-complainant directly into the Court of learned Judicial Magistrate (First Class), Veraval on 4-6-2003 under the provisions of Prevention of Food Adulteration Act, 1954 (`the Act' for short) making reference of Sections, 2(9)(k), 7(2), 7(5) and 16 of the Act and Rules 32(E), 32(F) and 32(l) alleging inter alia that breach of Secs.7(2) and 7(5) was committed and offence under Sec.16 of the Act, have filed this petition for quashing the complaint and the process issued in said complaint by the learned J.M.F.C, Veraval qua the petitioners.

2. The facts in short are that the respondent No.2-complainant visited a shop named Pooja Sales owned by one Shri P.N.Unadkat, Veraval and collected a sample of 'Sapan" iodised salt on 26-4-2000 which was bought by Pooja Sales (accused No.1) from Mr.S.K.Purohit, Proprietor of M/s Rajwadi Marketing (the accused No.2). The aforesaid sample was manufactured by the accused No.3 Company and accused Nos.4 to 19 are the Directors of the said accused No.3 Company. Said sample was forwarded to the Food and Drug Laboratory, Baroda and on analysis, it was found that the said sample was misbranded under the provisions of Act. Thereafter, after obtaining permission of the Local Health Authority, Junagadh, vide letter dated 18-5-2001, complaint was filed in which the learned Judicial Magistrate (First Class), Veraval, issued process under Secs.2,7 and 16 of the Act which is giving rise to prefer the present petition for quashing.

3. Heard Mr.R.K.Jain, Senior Advocate with Mr.Rakesh Gupta for M/s Trivedi & Gupta, for the petitioners, learned PP for the respondent No.1-State, Mr.A.D.Oza and Mr.Y.S.Lakhani, learned counsel for the respondent No.2.

4. It has been argued by Mr.Jain that out of 19 accused, only accused Nos.4 to 9, 11 and 13 to 19 have preferred the petition mainly on the ground that none of the petitioners-Directors are responsible for the day-to-day management of the Unit and that the Company has entrusted its day-to-day operations of the Unit at Kutch-Bhuj to various managerial personnel. According to him, two of the 16 directors of the Company, original accused Nos.7,13, 16, 17, 18 and 19 were not directors on the date when the offence is alleged to have committed. Accused Nos.4,5,8 and 12 are non-whole time executive directors and they are not directly connected with the day-to-day activities/management of the Company. Accused

Nos.6,7,9 and 19 are the directors nominated by the Government of Gujarat and other financial institutions. Accused No.11 is an alternate director in place of original accused No.10 who is non-executive director stationed out of country. Taking me through form No.32 (Annexure-D collectively), it has been argued by him that original accused Nos.14 and 15 are not in control over or connected with the day-to-day affairs of the Unit at Bhuj. It has been further argued that one Mr.Haresh Trivedi has been nominated for the purpose of the Act and, therefore also, complaint ought not to have been filed against other accused persons. It has been further argued that the complaint does not make out the offence against the petitioners as there is no allegation expressly made against any of the petitioners in the complaint except mentioning their names in the cause title of the complaint.

5. An argument has been advanced that none of the relevant and material aspects have been taken into consideration by the respondent No.3 while passing the order of sanction which consequently suffers from the vice of total non-application of mind as to who were the directors and who were not on the particular date and order and who are responsible for the day-to-day management of the unit and hence, sanction for prosecuting the present petitioners is not legal and valid. However, it is requested that this Court may not deal with the legality and the validity of said sanction and may be kept open.

6. He has relied upon the case of Municipal Corporation of Delhi Vs. Ram Kishen Rohtagi reported in AIR 1983 S.C. page 67 more particularly paragraphs 15 and 19 and reiterated that the complaint does not disclose any specific allegation against any of the petitioners herein and hence, it is requested that the impugned complaint may be quashed qua the present petitioners.

7. Whereas it has been argued by the learned counsel for the respondent No.2-complainant, Mr.Y.S.Lakhani, that since the complaint prima-facie discloses the ingredients of offences in question, Court should not interfere with the same at this stage. It has been further argued that even prior to filing of this petition, petitioners have submitted application Ex.14 into the court below for dropping of the process which has not been granted and, therefore also, this petition is required to be rejected. It has been further argued that question as to whether they were directors or looking after the day-to-day

affairs or management of the Company is the question to be dealt with or decided by the court below at the time of trial. At this stage, what is required to be seen is whether the complaint discloses the prima-facie ingredients of offence in question or not. Here in this case, since the complaint discloses the prima-facie ingredients of offence, court should not interfere with the same at this stage.

8. Learned Public Prosecutor for the respondent No.1 has supported the arguments advanced by the learned counsel for the respondent No.2, Mr.Lakhani.

9. Before I proceed further with the matter, law laid down by the Supreme Court in this regard relied upon by the learned counsel for the petitioners is required to be seen. It has been held in para 15 by the Apex Court in Municipal Corporation of Delhi Vs. Ram Kishen Rohtagi, AIR 1983 S.C. p.67 as under:

> "So far as the Directors are concerned, there is not even a whisper or shred of evidence nor anything to show, apart from the presumption drawn by the complainant, that there is any act committed by the Directors from which a reasonable inference can be drawn that they could also be vicariously liable. In these circumstances, therefore, we find ourselves in complete agreement with the argument of High Court that no case against the Directors (accused Nos.4 to 7) has been made out ex facie on the allegations made in the complaint and the proceedings against them were rightly quashed."

It has been held in para 19 by the Apex Court as under:

> "In these circumstances, therefore, if the prosecution can at any stage produce evidence which satisfies the Court that the other accused or those who have not been arrayed as accused against whom proceedings have been quashed have also committed the offence the Court can take cognizance against them and try them along with the other accused. But, we would hasten to add that this is really an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken."

10. Keeping in mind the above law laid down by the

Apex Court coupled with the documentary evidences annexed with the petition including form No.32, it appears that names of persons at Sr.Nos.4 to 19 are shown in the complaint as accused in the cause title along with their Companies out of which, accused Nos.7,13, 16, 17, 18 and 19 were not on the Board of Directors of the Company on the date on which alleged offence has taken place. It also appears that accused Nos.6,7, 9 and 19 are directors nominated by the financial institutions, accused Nos.4,5,8 and 12 are non-whole time directors of the Companies, accused No.10 is a non-executive director stationed out of country and accused No.11 is an alternate director in place of original accused No.10 under the provisions of Sec.313 of Companies Act, 1956 and accused Nos.14 and 15 are also not in control over or connected with the day-to-day affairs of the unit at Bhuj.

11. As per the evidence available on record, it is clear that the petitioners are not in control over or looking after the day-to-day affairs or functioning of the Unit of the Company at Bhuj as mentioned hereinabove. This being the position, if the impugned complaint is perused, no whisper or shred of evidence can be seen connecting the petitioners with the case except mentioning their names in the cause title of the complaint as directors of the companies. Since the impugned complaint does not disclose the ingredients of the offences alleged, in view of the aforesaid law laid down by the Apex Court, complaint is required to be quashed qua the petitioners. As far as other accused are concerned, investigation shall proceed further in view of the allegation made in the complaint.

12. Thus, this petition is allowed. Complaint and the process issued in Criminal Case No.868 of 2002 by the court of learned Judicial Magistrate (First Class), Veraval, are quashed and set aside qua the present petitioners. Rule is made absolute accordingly. Court below shall proceed with qua other accused. Legality and validity of the sanction are kept open as it has been requested by the learned counsel for the petitioners not to deal with the same though contended and argued.

(R.P.DHOLAKIA,J.)
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